



**FROM I DO TO I DON'T:  
RECOGNITION OF FOREIGN DIVORCE IN THE PHILIPPINES**

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**ABSTRACT**

Marriage faces significant challenges, including high divorce rates, reduced economic necessity, and evolving societal roles, often leading to instability. In the Philippines, marriage remains a deeply revered institution as an “inviolable social institution.” The Philippines stands uniquely as the only country worldwide where divorce is prohibited for all citizens except Muslims. The question is how it applies to a foreign marriage. Legal methods to dissolve marriage in the Philippines include annulment, nullity of marriage, legal separation, psychological incapacity, absolute divorce for Muslims, and recognition of foreign divorce decrees. Annulment addresses voidable marriages under Article 45 of the Family Code, such as those entered without the required parental consent or induced by fraud or force. To uphold the Filipino spouse’s equal rights and prevent grave injustice in foreign divorce recognition, the Supreme Court should continue its liberal interpretation of the regulations. Such a Circular should clarify who may initiate proceedings under foreign laws, explicitly grant Filipinos the capacity to remarry, adopt modern consular practices aligned with the Apostille Convention, and provide clear guidance on collusion findings in Divorce by Agreement cases.

**Keywords:** Foreign Divorce, Regulations, Philippines.

**A. INTRODUCTION**

Aside from the Vatican City, the Republic of the Philippines is the “*last country in the world where divorce is illegal.*” Although the practice has a long history in the Philippines setting, it has been tagged as “*home to philandering politicians, millions of “illegitimate” children, and marital laws that make Italy look liberal.*”



Marriage remains a deeply revered institution in the Philippines. Section 2, Article XV of the 1987 Constitution explicitly declares marriage as an “*inviolable social institution*” and the foundation of the family, mandating the State to protect it. This recognition elevates marriage beyond a mere civil contract to a vital public relation that society is committed to preserving. The State’s role in safeguarding marriage is crucial, as its stability underpins the family and the nation as a whole. By surrounding marriage with legal protections, the government seeks to ensure its purity, continuity, and permanence. The 1987 Philippine Constitution explicitly prevents the dissolution of marriage at the mere whim of the parties, underscoring its inviolable nature.

The Family Code of the Philippines reinforces this view by defining marriage as a special, permanent union between a man and a woman, entered into according to law for establishing conjugal and family life. It further affirms marriage as the foundation of the family and an inviolable social institution governed by law, limiting modifications to certain property relations only. Hence, Philippine law gives primacy to families founded on marriage, aligning with the State’s constitutional mandate to protect and strengthen these basic social units.

Philippine case law has consistently recognized the legal institution of marriage as a relationship of transcendental importance. As stated in *Avenido v. Avenido*,<sup>1</sup> “[t]he basis of human society throughout the civilized world is that of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested. Consequently, every intendment of the law leans toward legalizing matrimony.” The legal maxim of *semper praesumitur pro matrimonio*— a presumption always arises in favor of marriage — is codified in law through Article 220 of the Civil Code.

The Philippines stands uniquely as the only country worldwide where divorce is prohibited for all citizens except Muslims, a legal peculiarity rooted deeply in its colonial history. Spanish rule cemented marriage as an unbreakable institution, allowing only limited legal separation. This colonial legacy, reinforced by subsequent American occupation,

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<sup>1</sup> *Avenido v. Avenido*, G.R. No. 173540, January 22, 2014



fostered a socially conservative society that shaped restrictive laws limiting especially women's freedoms.

In place of divorce, Filipinos must resort to annulment or nullity of marriage—processes that are prohibitively expensive and rarely granted by courts. Many Filipino women speak out against the absence of accessible divorce, highlighting it as a structural form of oppression that traps them in unhappy or harmful marriages without a viable legal exit.

Emotions in strained marriages often evolve into anger and resentment, reflecting deeper unresolved wounds and breakdowns in communication. While divorce can offer freedom and relief, it carries significant financial and emotional burdens, especially for custodial parents and children. In the Philippines, the difficulty of ending a marriage contrasts sharply with the ease of entering one, underscoring the complexity and hardship of marital dissolution *#onlyinthePhilippines*.

A close review of dissolution of marriages in Philippines would confirm that Marriage, therefore, is not always “*Happy ever after*” or “*Til death do us part*” in the Philippines. Marriage is not always a lifelong commitment, as both the formation and dissolution of marriages continue to increase. Every year, around 400,000 marriages are solemnized, averaging roughly 1,100 daily. Despite the religious and cultural emphasis on the sanctity of marriage, the law provides several mechanisms for ending marital ties aside from death, acknowledging the complexity of marital relationships.

Legal methods to dissolve marriage in the Philippines include annulment, nullity of marriage, legal separation, psychological incapacity, absolute divorce for Muslims, and recognition of foreign divorce decrees. Annulment addresses voidable marriages under Article 45 of the Family Code, such as those entered without the required parental consent or induced by fraud or force. Nullity declarations apply to void marriages under Article 35 of the Family Code, which include marriages involving minors, bigamous unions, or lack of a marriage license.

Legal separation, under Article 55 of the Family Code, is permitted under specific grounds, such as physical or emotional abuse, abandonment, drug addiction, sexual infidelity, and imprisonment. Meanwhile, psychological incapacity, under Article 36 of the Family Code, allows annulment when a spouse is unable to fulfill essential marital obligations due to



a psychological condition. For Muslim Filipinos, absolute divorce is recognized under the Code of Muslim Personal Laws.

Additionally, the recognition of foreign divorce decrees has expanded legal options for those seeking to end their marriage in the Philippines. This development provides a legal avenue for Filipinos married abroad or with foreign spouses to obtain marital dissolution in line with local law, reflecting the evolving nature of family law in the country.

Understanding the definition and historical perspective of divorce in the Philippines is crucial for grasping the complexities involved in the petition for recognition of foreign divorce. Divorce, derived from the Latin word "*divortium*," essentially signifies separation or dissolution of the marital union. In legal terms, it is often defined as a judicial declaration that dissolves the marriage, releasing spouses from their matrimonial obligations. The Philippine legal system distinguishes between absolute divorce, which terminates marriage, and limited divorce, which only suspends marital cohabitation, recognizing that divorces serve different legal and social functions.

Historically, the Philippines had indigenous practices of divorce among various ancestral tribes long before colonial influence, with absolute divorce being common in some ethnic groups. The Spanish colonial period imposed the *Siete Partidas*, which allowed only legal separation but not absolute divorce. Subsequent legal developments under American rule, the Japanese occupation, and legislation such as Act 2710 (1917) introduced limited grounds for divorce, though the Civil Code of 1950 ultimately abolished absolute divorce, permitting only legal separation. Exceptions exist today mainly under the Muslim Code and provisions recognizing foreign divorces obtained by Filipinos abroad.

This historical trajectory explains the Philippines' unique stance on divorce, unlike most countries that recognize absolute divorce. Understanding these legal and cultural shifts clarifies why the petition for recognition of foreign divorce in the Philippines is a specialized legal process governed primarily by the Family Code under Article 26. It highlights the limited scenarios where foreign divorces can affect marital status domestically, emphasizing the continuing influence of the nation's historical legal framework on present-day family law. This context aids legal practitioners and petitioners in navigating the requirements and implications of recognizing foreign divorces judicially in the Philippines.



## **B. METHOD**

This article employs a doctrinal (normative) legal research method using statutory, case law, and conceptual approaches. It analyzes relevant provisions of Philippine family law and Supreme Court jurisprudence concerning marriage, annulment, nullity, and recognition of foreign divorce decrees. The study relies on primary legal materials (legislation and judicial decisions) and secondary sources (scholarly writings and commentaries), which are examined qualitatively through systematic legal interpretation to assess the adequacy of the existing legal framework and propose regulatory clarification.

## **C. DISCUSSION**

### **C1. Important Concepts On Petition For Recognition Of Foreign Divorce (PRFD)**

The Petition for Recognition of Foreign Divorce (PRFD) allows a Filipino spouse, divorced abroad by their foreign spouse, to remarry under Philippine law. The first requirement is that the foreign divorce must be valid according to the foreign country's laws, obtained with due process. Philippine courts recognize such divorces based on the principle of comity, which ensures respect and reciprocity between nations for foreign judgments, including divorce decrees.

Article 15 of the Civil Code of the Philippines mandates that laws on family rights and personal status are binding on Filipino citizens even abroad. Due to the nationality principle, only Philippine nationals are subject to the policy against absolute divorce, as it violates public policy and morality in the Philippines. In *Tenchavez v. Escaño*, the Supreme Court refused to recognize a divorce decree involving Filipino citizens, upholding this principle.

However, under Article 26 paragraph 2 of the Family Code, if a Filipino citizen is married to a foreigner and the foreign spouse validly obtains a divorce abroad, the Filipino spouse gains the capacity to remarry under Philippine law. The Philippine courts have jurisdiction to recognize the foreign divorce without trial on the merits, since this recognition only confirms the fact of the divorce, not re-litigates it.

Recognition of a foreign divorce is sought via a special proceeding under Rule 108 of the Rules of Court, which allows correction of civil registry records to reflect new status or rights. The foreign divorce decree, once proven authentic and consistent with the alien's



national law, acts as presumptive evidence under Section 48, Rule 39 of the Rules of Court, supporting the foreign spouse's right to remarry.

In *Corpus v. Sto. Tomas*,<sup>2</sup> the Supreme Court clarified that the PRFD is a single special proceeding under Rule 108, not two separate actions for recognition and cancellation of civil registry entries. This proceeding tests the validity of the foreign divorce decree against grounds such as jurisdictional defects, fraud, or collusion, ensuring proper due process before recognition.

### **C.2. Importance Of Petition For Recognition Of Foreign Divorce**

A petition for recognition of foreign divorce in the Philippines is essential to legally update one's marital status. Without judicial recognition, the foreign divorce decree cannot be registered with the Civil Registrar and the Philippine Statistics Authority (PSA), preventing issuance of a Certificate of No Marriage (CENOMAR) necessary for remarriage. Furthermore, the previous marriage remains valid under Philippine law, rendering any subsequent local marriage a potential bigamy offense. Non-recognition also allows the divorced spouse to claim rights to conjugal or community property after the spouse's death.

The petition must be filed before the Regional Trial Court (RTC) of the city or province where the relevant civil registry is located, or where the petitioner resides if the marriage took place abroad. It is not automatically raffled to the Family Court. Key procedural requirements include filing proper documents such as a certified PSA marriage certificate or foreign marriage record, a certified foreign divorce decree duly translated into English, and evidence of the foreign divorce law permitting remarriage.

Proof of the foreign divorce law is vital and must be authenticated, apostilled, or consular certified, with an official English translation if in another language. Per OCA Circular No. 157-2022, Family Courts may take judicial notice of translated foreign divorce laws available on the Supreme Court website, though this was updated by OCA Circular No. 157-2022-A, which authorizes the Department of Foreign Affairs to provide compilations of these laws for judicial use, consistent with prevailing jurisprudence and court issuances.

Citizenship and residence of both spouses—and of any children—must be demonstrated through birth certificates and passports to establish the foreign status of one spouse at the time of divorce under Article 26 of the Family Code. After filing, the RTC

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<sup>2</sup> *Corpus vs. Sto. Tomas*, G.R. No. 186571, August 11, 2010



orders publication of the petition's substance in a newspaper of general circulation for three consecutive weeks to notify interested parties.

Once the petition is granted, the court's decision must be registered with the Local Civil Registrar where the marriage was recorded or with the PSA if the marriage was registered abroad. This registration completes the recognition process and permits legal consequences such as issuance of a new CENOMAR, free remarriage, and clear property rights.

### **C.3. Evolution Of Petition For Recognition Of Foreign Divorce**

The denial of recognition of foreign divorce petitions has evolved from strict interpretations toward broader acceptance. Initially, the law's ambiguity and the Court's view that only the foreign spouse may initiate divorce under Article 26(2) were main grounds for denial. Issues then expanded to proving the divorce decree's validity and foreign law permitting remarriage, especially where divorces were jointly obtained by spouses, violating the sole-initiative requirement.

Key jurisprudence shows this progression: In *Van Dorn v. Romillo*, the Supreme Court criticized Article 15 of the Family Code for its discriminatory effect and acknowledged the absurdity of Filipinos being bound to a marriage while the foreign spouse is free to remarry, though it did not address remarriage rights explicitly. Subsequently, Article 26(2) was added to the Family Code to allow a Filipino spouse to remarry if the alien spouse validly obtained divorce abroad.

In *Garcia v. Recio*<sup>3</sup>, the Court distinguished absolute divorce, which fully dissolves the marital bond, from relative divorce, which only suspends it. *Republic v. Orbecido* clarified that Article 26(2) aims to prevent the absurdity of a Filipino remaining married when the foreign spouse is not, setting two requirements: (1) a valid marriage between a Filipino and foreigner, and (2) a valid divorce abroad obtained by the alien spouse, capacitating remarriage. The alien spouse's citizenship at the time of divorce is determinative.

In *Corpus v. Sto. Tomas*<sup>4</sup>, the Court held that the substantive right under Article 26(2) favors the Filipino spouse and cannot be invoked by the foreign spouse. Article 17 of the

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<sup>3</sup> Garcia vs. Recio, G.R. No. 138322, Oct. 2, 2001

<sup>4</sup> Corpus vs. Sto. Tomas, G.R. No. 186571, August 11, 2010



Civil Code generally disfavors absolute divorce, but Article 26(2) constitutes a direct exception allowing recognition of foreign divorces for Filipinos.

*Fujiki v. Marinay*<sup>5</sup> emphasized that Philippine courts recognize foreign judgments on marriage status only as evidence, without relitigating foreign laws or substituting foreign courts' judgments. Recognition depends on absence of public policy violations or fraud. Recognition must be registered with the Philippine Civil Registry to reflect the marital status officially, but does not extinguish criminal liability for bigamy.

*Medina v. Koike*<sup>6</sup> underscored that procedural rules must serve substantial justice, allowing flexibility to prevent rigid technicalities from obstructing relief.

The landmark *Republic v. Manalo*<sup>7</sup> fundamentally expanded recognition, permitting Filipinos to obtain and have foreign divorces recognized, regardless of who initiated the divorce, thus affirming the Filipino spouse's right to remarry. This ruling also provides protection for trafficking victims trapped in abusive marriages.

#### **C.4. Rule On Evidence In Petition For Recognition Of Foreign Divorce**

In petitions for recognition of foreign divorce, the foreign judgment and its authenticity must be proven under the Revised Rules on Evidence and the Alien Spouse's Law, as held in *Garcia v. Recio*.<sup>8</sup>

Rule 132 of the Revised Rules on Evidence governs proof of the divorce decree and alien spouse's capacity to remarry, specifically:

- Section 19 classifies documents as public or private, with public documents including official acts or records of sovereign authorities, documents acknowledged before a notary (except wills), and public records filed in the Philippines.
- Section 24 allows proof of official records by official publication or attested copies from the legal custodian or deputy, including certification from appropriate diplomatic or consular officers if kept abroad, with seal authentication.

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<sup>5</sup> *Fujiki vs. Marinay*, G.R. No. 196049, June 26, 2013

<sup>6</sup> *Medina vs. Koike*, G.R. No. 215723, July 27, 2016

<sup>7</sup> *Republic vs. Manalo*, G.R. No. 221029, April 24, 2018

<sup>8</sup> *Garcia vs. Recio*, G.R. No. 138322, Oct. 2, 2001



- Section 25 requires attestation to state the copy is a true copy of the original, under the official seal.
- Section 33 mandates translation into English or Filipino for documents in unofficial languages.

Thus, foreign divorce decrees and relevant alien spouse laws must be submitted as official publications or certified attested copies with proper certification and seal, subject to the Apostille Convention.

### **C.5. Era Of Japanese Divorce For Recognition In The Philippines**

The Japanese divorce system is multifaceted, reflecting a culturally ingrained preference for agreement between parties. The Supreme Court of the Philippines has recognized the relevance of understanding the Japanese concept of divorce, especially given its frequent occurrence in cases involving Japanese nationals.

#### **Types of Divorce in Japan**

1. Divorce by Agreement (協議離婚, kyogi rikon) - This is the most common form. It occurs without court intervention, based on mutual consent between spouses. Key issues such as parental authority (親権, shinken), visitation rights, child support (養育費, yoikuhi), emotional damage compensation (慰謝料, isharyo), and asset division are negotiated and agreed upon. Emotional difficulty often arises due to the sensitive nature of these issues.
2. Divorce by Conciliation (調停離婚, chotei rikon) - When spouses cannot agree, they enter a family court conciliation, a mandatory step before litigation. The process is mediated by one judge and a two-person committee. Agreements reached become as binding as a court judgment. This reflects Japan's emphasis on mediation-like resolution before adversarial proceedings.
3. Divorce by Judgment (裁判離婚, saiban rikon) - If conciliation fails, the court may issue a decision, which becomes final unless objected to within 2 weeks. Litigation for divorce requires proving legal grounds such as unchastity, abandonment, ambiguity of life or death, incurable mental illness, or other serious reasons making marriage untenable. This form is rare and considered a last resort.



The Supreme Court of the Philippines has progressively acknowledged the validity of Japanese divorces by agreement, emphasizing respect for foreign divorce laws when parties are Japanese nationals.

Thus, understanding Japan's divorce processes—especially the emphasis on agreement—is crucial for Philippine courts when addressing cases involving Japanese nationals, ensuring proper recognition consistent with Philippine public policy and international comity principles.

The case of *Racho v. Tanaka*<sup>9</sup> involved recognition of a Japanese divorce by agreement, where the petitioner presented a Divorce Certificate and an English copy of the Japanese Civil Code (JCC). The Regional Trial Court (RTC) denied the recognition petition, holding that the Divorce Certificate is not a Divorce Decree (DD). The petitioner elevated the case to the Supreme Court, submitting the Certificate of Acceptance of Report Divorce, which was not yet available during the RTC proceedings. The Office of the Solicitor General (OSG) argued non-compliance with Section 24, Rule 132 of the Rules of Court and pointed out that Japanese law did not provide for divorce by agreement, as allegedly required under paragraph 2 of Article 26 of the Family Code.

The Supreme Court rejected the OSG's narrow interpretation of Article 26 of the Family Code. Justice Marivic Leonen emphasized that Japanese law does not prohibit a Filipino spouse from participating in divorce proceedings abroad and that forbidding this would be unjust and contrary to the law's purpose. The Court held that a foreign divorce validly obtained must be recognized regardless of which spouse initiated the divorce, as supported by recent jurisprudence such as *Morisono v. Morisono* and *Sakai v. Republic*<sup>10</sup>.

In *Morisono v. Morisono*, the RTC erroneously denied recognition because the Filipino spouse initiated the divorce, but this was overruled in line with *Republic v. Manalo*, which clarified that participation or initiation by the Filipino spouse does not bar recognition but factual proof of conformity with foreign law is required, leading to remand for factual determination.

Similarly, in *Sakai v. Republic*, the Supreme Court stressed the intent of paragraph 2, Article 26 of the Family Code—to prevent a Filipino spouse from remaining married

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<sup>9</sup> *Racho vs. Tanaka*, G.R. No. 199515, June 25, 2018

<sup>10</sup> *Morisono vs. Morisono*, G.R. No. 226013, July 2, 2018



domestically while the alien spouse is free abroad—does not distinguish who initiates the divorce. Thus, both spouses are equally entitled to recognition if the divorce is validly obtained.

The Court also underscored the procedural requirement under Section 24, Rule 132, needing authenticated foreign documents and proof of foreign law as supporting evidence, as highlighted in *Nullada v. Manila* and *Arreza v. Toyo*. Official documents like Divorce Certificates must be properly authenticated and translated to be admissible; they are not self-authenticating per se.

In *In Re: Takahashi*, the Supreme Court recognized that documents like Divorce Reports issued by Japanese municipal authorities, although not formal court judgments, are official acts equivalent to Divorce Decrees and must be considered valid proof of divorce.

Cases like *Galapon v. Republic*<sup>11</sup> reinforce a liberal and purposive interpretation of Article 26(2), requiring recognition of foreign divorce decrees so long as the alien spouse obtains a valid divorce abroad, capacitating remarriage, without discrimination based on who initiated the proceeding.

The Court has consistently favored recognition of foreign divorce in mixed marriages to avoid injustice and uphold substantial justice over rigid procedural technicalities, as established in *Kondo v. Civil Registrar General* and reaffirmed in *Republic v. Mimori*, promoting uniformity in the practice.

#### **C.6. Studies On Recognition Of Foreign Divorce**

The reintroduction of divorce into Philippine law is needed due to the limitations of existing remedies—nullity, annulment, and legal separation—that fail to address many marital issues effectively. Divorce recognizes valid marriages and severs marital bonds, unlike nullity or annulment, which declare the marriage void from the start, or legal separation, which only allows spouses to live apart without ending the marriage<sup>12</sup>.

Constitutionally, the State must protect and strengthen the family (Art. XV, Sec. 1, 1987 Philippine Constitution), but the term "family" extends beyond traditional concepts.

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<sup>11</sup> Galapon vs. Republic, G.R. No. 246722, January 20, 2020

<sup>12</sup> Jacob J. (2013), Reintroduction of Divorce into Philippine Law, Master of Laws, Faculty of Law, University of Toronto



Divorce can enhance family protection by offering positive social consequences for spouses and children. As a signatory to international human rights treaties, the Philippines has the obligation to uphold rights to equality, non-discrimination, and protection from inhuman treatment—commitments undermined by the absence of divorce laws. Treaty bodies, including CEDAW and the Human Rights Committee, have urged the country to enact divorce legislation.

The 1987 Constitution does not prohibit divorce. Other predominantly Catholic countries with similar constitutional protections permit divorce, showing its compatibility with Filipino values and legal framework. Divorce also provides battered spouses protection by terminating abusive marriages, addressing domestic violence more effectively than legal separation, which merely allows physical separation.

Moreover, divorce promotes equality between Muslim Filipinos (who are allowed divorce under personal laws) and non-Muslims, ensuring fair access across religious lines. Public opinion supports divorce legalization, aligning with democratic principles to uphold the will of the people.

Current procedures for annulment, nullity, and legal separation are onerous, expensive, and adversarial, limiting access to justice. Inclusion of both fault and no-fault grounds is crucial, with no-fault divorce empowering spouses to end marriages consensually without proving fault—a protection aligned with the consensual nature of marriage and preventing unnecessary state or judicial interference (Women’s Legal Bureau stand). In sum, divorce fills critical gaps left by existing laws, aligns with constitutional and international mandates, protects vulnerable spouses, fosters equality, respects popular will, and offers a humane, accessible remedy for marital breakdown.

The Philippine law does recognize divorce, but only within the framework of the Muslim Code. Under this Code, divorce is permissible for marriages between Muslims and for mixed marriages where the husband is Muslim and the marriage was solemnized according to Muslim law (Muslim Code). This remains the sole legal provision allowing domestic divorce in the country <sup>13</sup>

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<sup>13</sup> Deriquito-Mawis M. S. (2021), *Filipinos Without Borders: The Convergence of Law, Religion, Citizenship and Marriage*, IBP Journal Volume 46 Issue No. 1



Filipinos' ability to dissolve marriage depends on circumstance: (a) Filipinos married to foreigners, (b) Filipinos naturalized in countries allowing divorce, or (c) Filipino Muslims married under the Muslim Code. Non-Muslim Filipinos under the Family Code do not have this option, reflecting a legal and religious dichotomy. Key issues raised include: Why are non-Muslim Filipinos denied divorce rights despite suffering in irreparable marriages, while Muslim Filipinos enjoy it? How can divorce be deemed unconstitutional when allowed under the Muslim Code? Does Islamic teaching provide greater gender sensitivity than Christian precepts embodied in Philippine civil law? The author calls not merely for advocacy of divorce legalization, but for recognition of every Filipino's right to live and love freely, grounded in Christian values of love and commitment, and trust in Filipino maturity to reconsider existing divorce laws. This legal-religious-citizenship nexus highlights ongoing tensions in Philippine family law between constitutional principles, religious pluralism, and individual human rights.

The Supreme Court's doctrine on recognizing foreign divorce decrees in mixed marriages has evolved significantly, culminating in the prudent yet controversial decision in *Republic vs. Manalo*. The Court adopted a liberal interpretation of the second paragraph of Article 26 of the Family Code, aiming to prevent subsequent relationships of Filipino spouses from being deemed "illicit" when their foreign spouses validly divorce abroad. However, this interpretation highlights a legal tension: Philippine law restricts Filipino nationals from securing a divorce, unlike their foreign spouses, making legislative reform necessary to address this disparity fully<sup>14</sup>.

Justice Alfredo Benjamin S. Caguioa's dissent in *Manalo* underscored this tension by emphasizing the enduring public policy against absolute divorce in the Philippines. He asserted that the Court's duty is strictly to interpret existing law, not to create law—a power reserved for Congress. The dissent cautioned against judicial overreach, stressing that accommodating the realities of mixed marriages should be left to legislative amendment rather than expansive judicial interpretation.<sup>15</sup>

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<sup>14</sup> Sta. Maria, A. (2018), *From Van Dorn to Manalo: An Analysis of the Court's Evolving Doctrine in the Recognition of Foreign Divorce Decrees in Mixed Marriages*, Ateneo Law School Publication, Ateneo de Manila University

<sup>15</sup> STA. Maria, *Ibid*



Further case analysis by Justice Ronaldo Roberto B. Martin, spanning from Tanaka to Takahashi, illustrates the Court's procedural challenges in recognizing foreign divorces by agreement. In these cases, the Court often accepted substitute documents such as Certificates of Acceptance or Divorce Reports as adequate proof of divorce, despite no formal divorce decree being issued, especially in countries like Japan. This pragmatic approach reflects the Court's acknowledgment of procedural realities but also exposes gaps, such as the requirement to prove foreign laws under Rule 132, Section 24 of the Rules of Court and issues of public policy under Article 17 of the New Civil Code<sup>16</sup>.

The Nullada case remains pivotal, as it was the only instance where the applicability of Article 17, which protects marriage as an inviolable social institution, was directly raised. Justice Martin argues that the Court missed the opportunity to fully explore whether consensual divorce by agreement between spouses constitutes collusion invalidating the divorce under public policy considerations. This issue is critical as it touches on whether such divorces undermine constitutional protections on marriage, a point that merits further judicial or legislative scrutiny<sup>17</sup>.

In conclusion, the Supreme Court's liberal stance in recognizing foreign divorces in mixed marriages reflects a judicial attempt to reconcile Filipino spouses' plight with existing public policy. Yet, as Justice Caguioa and Justice Martin highlight, this judicial evolution operates within a constrained legal framework that demands legislative action to provide clear, equitable remedies. The recognition of foreign divorces—especially those by agreement—requires not only procedural compliance but also substantive evaluation against Philippine public policy and constitutional mandates. Thus, legislative reform remains the ultimate solution to harmonize this evolving jurisprudence.

### **C.7. Contemporary Developments On Recognition Of Foreign Divorce**

The Supreme Court of the Philippines has progressively clarified the rules on recognition of foreign divorces, especially through A.M. No. 21-03-02-SC, which governs

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<sup>16</sup> Martin R. (2020), Recognition of Foreign Divorce by Agreement: The Procedural and Substantive Issues from Tanaka to Takahashi, *Ateneo Law Journal*

<sup>17</sup> Martin, *Ibid.*.



actions for support and recognition/enforcement of foreign support judgments. This rule applies broadly to those entitled to support under the Family Code and other laws, covering children regardless of parental marital status.

**Filing and Venue:** Under Rule II, Section 4 of A.M. No. 21-03-02-SC, actions for support and recognition of foreign judgments must be filed in the Family Court with territorial jurisdiction over the plaintiff's or defendant's residence or property (if the defendant is absent from the Philippines).

**Venue Clarification Case:** *Marietta Johansen vs. OCRG* (G.R. No. 256951, 2021) clarified the proper venue for foreign divorce recognition petitions under Rule 108, Sec. 1 of the Rules of Court. The petition must be filed where the civil registry (DFA or OCRG) holds the Report of Marriage, not based on convenience.

#### Key Supreme Court Decisions on Foreign Divorce Recognition

- *Basa-Egami v. Bersales* (G.R. No. 250304, 2022): Affirmed remand to prove foreign divorce law (Japanese law) that allows alien spouse remarriage; acknowledged recognition of divorce by mutual consent.
- *Republic vs. Saito* (G.R. No. 247297, 2022): Held that foreign divorces obtained jointly by spouses abroad may be recognized.
- *Regie David Tsutsumi v. Republic* (G.R. No. 258130, 2023): Confirmed Japanese divorce by mutual agreement as valid and admissible evidence, authenticated by the Japanese Embassy.
- *Republic vs. Ruby Cuevas Ng* (G.R. No. 249238, 2024): Emphasized that recognition is not limited to judicial divorces; foreign administrative divorces are equally valid. The Court rejected the view that divorces by mutual agreement necessarily indicate collusion. The ruling underscored the literal interpretation of Article 26(2) of the Family Code allowing recognition of foreign divorce decrees without limiting to judicial proceedings only.

However, there are Significant Judicial Opinions on Recognition of Foreign Divorce in that case of *Republic vs Ng*:



- Justice Rodil Zalameda: Stressed the importance of recognizing divorces abroad to give Filipinos freedom to remarry and avoid being trapped in failed marriages, criticizing courts for denying recognition and noting the social harm caused.
- Justice Alfredo Benjamin Caguioa: Distinguished "agreement" from "collusion," supporting recognition of mutual consent divorces to prevent fabrication of faults that might encourage collusion.
- Justice Marivic Leonen: Advocated a nuanced, realistic view of family that recognizes mutual agreement divorces as sometimes promoting peaceful resolutions and protecting children.
- Justice Alexander Gesmundo: Emphasized the need to comply with evidentiary rules (Rule 132, Secs. 24-25 RRE) to prove divorce facts and conformity with foreign law, noting the OCA's compilation of foreign laws is only preliminary guidance.
- Justice Maria Filomena Singh (Dissent): Asserted recognition should be limited to divorces through judicial proceedings to protect Filipino spouses and prevent circumvention of the ban on absolute divorce; extrajudicial divorces should not be recognized.
- Justice Ramon Raul Hernando (Dissent): Viewed extrajudicial foreign divorces (non-judicial) as violating Philippine public policy and treating marriage with undue indifference, thus unrecognizable.

The recognition of foreign divorce in the Philippines remains governed by the principle that foreign judgments, including divorce decrees, are not subject to judicial notice and must be formally proven as facts per the Rules of Evidence. This was clarified in *Arreza vs. Toyo*<sup>18</sup>, where the Supreme Court ruled that foreign divorce decrees, as foreign judgments, must be pleaded and proven before they take legal effect in the Philippines.

The Supreme Court's issuance of OCA Circular Nos. 157-2022 and 157-2022-A provides an official reference for courts – including Family Courts and other courts – on the foreign laws governing marriage and divorce from various countries. While these

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<sup>18</sup> *Arreza vs. Toyo*, G.R. No 213198, July 1, 2019



compilations facilitate judicial reference, they do not replace the need for presentation and proof of foreign divorce decrees in court.

Amendments to the Revised Rules on Evidence, specifically under Rules 132, Sections 19 and 24, clarify the classification and proof of public documents, including foreign divorce decrees. Public documents, acknowledged before notaries or considered as such under treaties, are self-authenticating and require no further authentication, as emphasized in *Republic vs. Unabia* (G.R. No. 213346, February 11, 2019). The provision allows documents from foreign countries party to relevant treaties to be evidence by certificates issued by authorized officials, serving as prima facie proof of authenticity.

Furthermore, the implementation of the Apostille Convention for the Philippines (effective May 14, 2019) simplified the authentication process of Philippine public documents abroad, including those relevant to marital status, by eliminating the need for consular legalization when the receiving country is also a State Party to the Convention. In sum, recognition of foreign divorce requires compliance with procedural rules on evidence, the formal presentation of documents, and observance of international treaties and conventions, ensuring their authenticity and validity under Philippine Law.

Recognition of foreign divorce in the Philippines remains governed primarily by existing jurisprudence and policies under the Family Code of the Philippines (Executive Order No. 209, as amended). Currently, the country does not have a law expressly allowing absolute divorce domestically, except for Muslims under Presidential Decree No. 1083 (Code of Muslim Personal Laws). Recognition of foreign divorce depends heavily on whether the foreign divorce was validly obtained abroad and on the nationality or residency of the parties involve.

The legislative landscape, however, shows significant developments with numerous proposed bills seeking to introduce absolute divorce in the Philippines and streamline recognition of foreign divorces. Key proposed bills include:

- House Bills 1799 (2010), 4016 (2005), 6993 (1999), and Senate Bill 782 (2001) all aimed at legalizing divorce by amending relevant provisions of the Family Code, signaling longstanding legislative interest.
- More recently, Senate Bill No. 2443 (2023) and especially House Bill No. 9394 (2024) titled “An Act Reinstating Absolute Divorce as an Alternative Mode for the Dissolution of Marriage” advanced debates on divorce norms.



House Bill No. 9394 is pivotal as it concretely proposes judicially granted absolute divorce based on grounds such as legal separation causes, annulment grounds, irreconcilable differences, psychological incapacity (Article 36, Family Code), five years' de facto separation, gender transition, and marital abuse. The Bill underscores affordability, expeditious court processes, and safeguards for children and spouse support.

Crucially, Section 6 of HB No. 9394 proposes civil recognition of valid foreign divorces without requiring judicial validation in the Philippines. The provision mandates authentication by the Philippine Consul near the foreign country and registration with Philippine civil authorities, regardless of which spouse — alien or Filipino — obtained the foreign divorce. This shifts recognition from a judicial to an administrative process, reflecting a progressive move to simplify and speed up recognition, aligning with principles from cases like *Republic v. Court of Appeals* (G.R. No. 121582, 1997)<sup>19</sup>, which stresses the need for due process in recognizing foreign divorce but does not prohibit administrative processes.

This proposed legislative framework would significantly ease recognition of foreign divorces and complement the bill's introduction of absolute divorce, which if enacted, could harmonize domestic and international marital dissolution laws, reducing socio-legal complexities currently faced by Filipinos with foreign divorce decrees.

#### **D. CONCLUSION**

The jurisprudence on the recognition of foreign divorce in the Philippines demonstrates an evolving and liberal approach by the Supreme Court to prevent injustice against Filipino spouses. Landmark rulings such as *Corpuz vs. Sto. Tomas*<sup>20</sup> and *Racho vs. Tanaka*<sup>21</sup> have clarified procedural and substantive aspects, recognizing divorce by agreement and emphasizing constitutional equality. The Court has consistently upheld the Filipino spouse's right to participate in foreign divorce proceedings (*Republic vs. Sakai*<sup>22</sup>), rejected discriminatory interpretations (*Republic vs. Manalo*), and cautioned against procedural roadblocks that impede justice (*Konda vs. CRG*). Despite occasional contradictory rulings

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<sup>19</sup> Republic v. Court of Appeals (G.R. No. 121582, 1997)

<sup>20</sup> Corpuz vs. Sto. Tomas, op.cit

<sup>21</sup> Racho vs. Tanaka, G.R. No. 199515, June 25, 2018

<sup>22</sup> Sakai vs. Republic, G.R. No. 224015, July 23, 2018



like *Galapon vs. Republic*, the trend favors practical recognition of foreign divorces while balancing procedural safeguards.

However, limitations remain, especially regarding procedural consistency and the narrow scope of OCA Circular No. 157-2022-A, which restricts accessible foreign divorce laws and complicates the remittance of cases back to trial courts. The Supreme Court's current practice of remanding recognition cases for proof of divorce decrees and foreign laws imposes burdens on litigants and court dockets.

To uphold the Filipino spouse's equal rights and prevent grave injustice in foreign divorce recognition, the Supreme Court should continue its liberal interpretation, as advocated by Justice Henri Jean Paul Inting: "[t]o Deny the Filipino spouse the recognition of her divorce from her alien spouse would be to perpetrate a grave injustice." This approach ensures fairness and respects the fundamental dignity of Filipinos seeking legal clarity after the dissolution of marriage abroad.

Section 13, Article VIII of the 1987 Constitution empowers the Court to promulgate a comprehensive Circular standardizing both procedural and substantive rules for recognizing foreign divorce petitions. Such a Circular should clarify who may initiate proceedings under foreign laws, explicitly grant Filipinos capacity to remarry, adopt modern consular practices aligned with the Apostille Convention, and provide clear guidance on collusion findings in Divorce by Agreement cases in light of *Republic vs. Ng*.

These reforms will streamline the recognition process, mitigate court congestion, and establish uniformity and predictability in family law cases involving foreign divorce. Judicial training programs for RTC judges and a broadened list of recognized foreign laws will further enhance access to justice and protect Filipino spouses navigating the complexities of foreign divorce recognition.



## REFERENCES

- Abalos J. (2017), Divorce and Separation in the Philippines: Trends and Correlates, A Demographic Research.
- Arreza vs. Toyo, G.R. No 213198, July 1, 2019
- Atheron vs. Atherton, 181 U. S.155, 21 Sup. Ct. 544, 45 L.
- Avenido v. Avenido, G.R. No. 173540, January 22, 2014
- Basa-Egami vs. Bersales, G.R. No. 250304, July 6, 2022
- Corpus vs. Sto. Tomas, G.R. No. 186571, August 11, 2010
- Deriquito-Mawis M. S. (2021), Filipinos Without Borders: The Convergence of Law, Religion, Citizenship and Marriage, IBP Journal Volume 46 Issue No. 1
- Fujiki vs. Marinay, G.R. No. 196049, June 26, 2013
- Galapon vs. Republic, G.R. No. 246722, January 20, 2020
- Garcia vs. Recio, G.R. No. 138322, Oct. 2, 2001
- Gerbert Corpuz vs. Daisylyn Sto. Tomas, GR No. 186571, 2010-08-11
- In Re: Takahashi, G.R. No. 227606, December 5, 2019
- Jacob J. (2013), Reintroduction of Divorce into Philippine Law, Master of Laws, Faculty of Law, University of Toronto
- Kahambing, J. Case-Deguma, M. & Deguma, J., (November 2019), Marrying, Loving, and Dreaming: A Case Study of the Developmental Tasks of Lasting Marriages in the Philippines, Academic Journal of Interdisciplinary Studies.
- Kondo vs. Civil Registrar General, G.R. No. 223628, March 4, 2020
- Marietta Johansen vs. OCRG, G.R. No. 256951, November 29, 2021
- Martin R. (2020), Recognition of Foreign Divorce by Agreement: The Procedural and Substantive Issues from Tanaka to Takahashi, Ateneo Law Journal
- Medina vs. Koike, G.R. No. 215723, July 27, 2016
- Morisono vs. Morisono, G.R. No. 226013, July 2, 2018
- Nullada vs. Manila, G.R. No. 224548, January 23, 2019
- Quita vs. Court of Appeals, 300 SCRA 4063 (1988)
- Racho vs. Tanaka, G.R. No. 199515, June 25, 2018
- Republic v. Unabia, G.R. No. 213346, February 11, 2019
- Republic vs. Manalo, G.R. No. 221029, April 24, 2018
- Republic vs. Mimori, G.R. No. 234487, April 15, 2022
- Republic vs. Ng, G.R. No. 249238, February 27, 2024
- Republic vs. Orbecido, G.R. No. 154380, October 5, 2005
- Republic vs. Saito, G.R. No. 247297, August 17, 2022
- Sakai vs. Republic, G.R. No. 224015, July 23, 2018
- Sta. Maria, A. (2018), From Van Dorn to Manalo: An Analysis of the Court's Evolving Doctrine in the Recognition of Foreign Divorce Decrees in Mixed Marriages, Ateneo Law School Publication, Ateneo de Manila University
- Sumagka vs. Sumagka, G.R. No. 200697, June 10, 2019
- Tenchavez v. Escaño, G.R. No. L-19671, July 26, 1965
- Tsutsumi vs. Republic, G.R. No. 258130, April 17, 2023
- Van Dorn v. Romillo 139 SCRA 139 (1985)